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11 Attorneys for Plaintiff
12 PATRICK POTE

13 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

14 **COUNTY OF LOS ANGELES**

15 PATRICK POTE,

16 Plaintiff,

17 v.

18 HANDY TECHNOLOGIES, INC. and
19 DOES 1-10,

20 Defendants,

Case No. BC723965

FIRST AMENDED COMPLAINT

CONFORMED COPY
OF ORIGINAL FILED
Superior Court of California
County of Los Angeles

NOV 19 2018

Sherri R. Carter, Registrar/Officer/Clerk
BY Melody Scott, Deputy
MELODY SCOTT

FILED

1 PLAINTIFF PATRICK POTE hereby alleges as follows:

2 **BACKGROUND**

3 1. PLAINTIFF PATRICK POTE (“POTE”) works as a house cleaner for DEFENDANT
4 HANDY TECHNOLOGIES, INC. (“HANDY”). He and other service providers clean and repair
5 clients’ houses for flat rates per job. HANDY implements this flat rate such that POTE and other
6 service providers are not paid for overtime, rest breaks, missed meal or rest breaks, expenses incurred
7 like cleaning supplies or gas, or travel time to and between jobs. Further, HANDY retracts earned pay
8 if its service providers wish to receive their pay on an expedited basis.

9 2. This is an action for both declaratory relief and relief under the Private Attorneys’
10 General Act of 2004 (“PAGA”), Cal. Lab. Code §§ 2698-2699.5. The declaratory relief concerns the
11 enforceability of certain provisions stated in a mandatory “Service Professional Agreement”
12 (hereinafter the “Agreement”) that POTE was required to sign in or around September 2017 upon
13 commencing employment with HANDY. The PAGA portion concerns HANDY’s violations of several
14 provisions of the California Labor Code.

15 **DECLARATORY RELIEF ALLEGATIONS**

16 3. In approximately September 2017, POTE applied to HANDY to be a house cleaner. At
17 the time of his hiring, HANDY required POTE to agree to the Service Professional Agreement (“the
18 Agreement”) with HANDY as a mandatory condition of his employment.

19 4. The Agreement HANDY required POTE to agree to as a condition of his employment
20 contained a “Representative Action Waiver.” That waiver stated: “Private attorney general
21 representative actions brought on behalf of the state under the California Labor Code are not arbitrable,
22 not within the scope of this Agreement and may be maintained in a court of law, but any claim brought
23 by Service Professional for recovery of underpaid wages (as opposed to representative claims for civil
24 penalties) under the California Labor Code shall be arbitrable, and must be brought, if at all, on an
25 individual basis in arbitration as set forth in this Mutual Arbitration Provision.”

26 5. The Agreement also stated: “Notwithstanding any other clause contained in this
27 Agreement . . . any claim that all or part of the . . . Representative Action Waiver is unenforceable,
28 invalid, unconscionable, void or voidable *may be determined only by a court of competent jurisdiction*

and not by an arbitrator.” (Emphasis added.)

6. The Agreement provided further that, while the Federal Arbitration Act governs the Mutual Arbitration Provision, the Agreement “shall be governed and interpreted pursuant to the laws of the state in which the Service Professional performs the majority of his or her services under the Agreement” POTE performs all (or virtually all) of his services under the Agreement in California.

7. In this action, POTE seeks declarations from this Court that the above-referenced prohibition on bringing “representative” actions “for recovery of underpaid wages,” to the extent that those underpaid wages are, in fact, PAGA penalties, was and is void as contrary to the public policy of the State of California, and was and is illegal within the meaning of California Civil Code § 1667 and California Labor Code § 432.5 as a result.

PAGA ALLEGATIONS

8. POTE also brings suit under California's Private Attorneys General Act (PAGA) as the representative of current and former HANDY employees who are or were affected by HANDY's violations of California's Labor Code.

9. HANDY provides home services, including cleaning and home repair. HANDY operates through a software application, which individual customers use to request services. HANDY service providers sign up to complete these “jobs.”

10. According to HANDY’s website, handy.com, HANDY has booked home services over three million times in cities in California and across the country—including the California cities of Los Angeles, Modesto, Santa Barbara, San Diego, San Francisco, Orange County, Palm Springs, Sacramento, Stockton, Temecula, and San Jose.

11. Since mid-November 2016, Handy has paid its service providers, including POTE, by the job. HANDY pays its cleaners based on a base rate, which itself is based on experience and customer rankings. HANDY pays service providers one week following job completion at an amount equal to the base rate times the original job time estimate. HANDY accounts for neither the amount of time the service provider actually spent on the job nor whether the service provider spent time performing “non-productive” tasks not related to the job. When service providers work on multiple

1 jobs in one day, HANDY does not pay for travel time between jobs—it pays only for the per-job
2 payment described above.

3 12. This pay structure also does not account for overtime owed when the service provider
4 works more than eight hours in a day or forty hours in a week, or for when the service provider is
5 unable to take meal and rest breaks.

6 13. HANDY also does not reimburse service providers for the expenses they incur in
7 performing their work for HANDY, such as buying their own cleaning supplies or arranging their own
8 transportation to, from, and between job sites.

9 14. While HANDY generally pays its employees one week after they complete their jobs, it
10 deducts a fee from its service providers' pay if the service provider requests to be paid earlier than
11 scheduled.

12 15. HANDY does not provide formal itemized wage statements to its service providers but
13 instead provides payment summary emails.

14 16. POTE is a cleaner with HANDY. In order to access his schedule and directions to his
15 first job site on any given day, POTE logs onto HANDY's software application (or "app"). From then
16 through the end of his workday, which ends when all of his scheduled jobs are complete, POTE is in
17 contact with HANDY via the app.

18 17. Since POTE began working for HANDY, he has worked more than eight hours in a day
19 and 40 hours in a week but he has not received overtime pay when he did so. He has also traveled from
20 one worksite to another but has not received pay for such travel time. POTE was also regularly unable
21 to take a 30-minute meal period or two ten-minute rest periods during his work day. When he did so,
22 he did not receive any compensation from HANDY for the missed breaks. POTE also incurred
23 expenses as a direct consequence of the discharge of his duties for HANDY but did not receive
24 reimbursement for these expenses. In addition, POTE did not receive detailed itemized wage
25 statements from HANDY. POTE also was required to give part of his earnings back to HANDY when
26 he requested that his compensation be paid more quickly than one week after performing a job.

27 **THE PARTIES**

28 18. PLAINTIFF PATRICK POTE has at all relevant times been a resident of Studio City,

1 California. He has been employed by DEFENDANT HANDY as a cleaner in the greater Los Angeles
2 area, and began cleaning houses for DEFENDANT HANDY in April 2018.

3 19. DEFENDANT HANDY is a Delaware corporation headquartered in New York, New
4 York, at 53 West 23rd Street, Third Floor, New York, New York, 10010.

5 20. PLAINTIFF does not know the true names and capacities of defendants sued in this
6 COMPLAINT as DOES 1-10, inclusive, and therefore sues these defendants by fictitious names
7 pursuant to Section 474 of the California Code of Civil Procedure. PLAINTIFF will amend this
8 COMPLAINT to allege the true names and capacities of DOES 1-10, inclusive, when and if
9 ascertained. PLAINTIFF is informed and believes, and on that basis alleges, that each of the
10 defendants named herein as DOES 1-10, inclusive, is responsible in some manner for the occurrence
11 and injury alleged in this Complaint.

12 **JURISDICTION AND VENUE**

13 21. This Court has jurisdiction over the causes of action asserted herein because they arise
14 out of an employment relationship between PLAINTIFF, who works and resides in Los Angeles
15 County, and his employer. HANDY has sufficient minimum contacts with the State of California, and
16 has otherwise intentionally availed itself of the benefit of doing business within the State of California
17 so as to render the exercise of jurisdiction over it by the State of California courts consistent with
18 traditional notions of fair play and substantial justice.

19 22. Venue is proper in this Court under Code of Civil Procedure §§ 395 and 395.5 because
20 this action concerns HANDY's employer-employee relationship with POTE, who works and resides in
21 Los Angeles County, California.

22 **FIRST CAUSE OF ACTION**

23 **(DECLARATORY RELIEF – CCP § 1060)**

24 23. PLAINTIFF realleges and incorporates the foregoing paragraphs as though fully set
25 forth herein.

26 24. When PLAINTIFF was hired by DEFENDANT HANDY, he was required to enter into
27 the Agreement.

28 25. There currently exists an actual and real controversy between PLAINTIFF and

1 DEFENDANT HANDY regarding the legality and enforceability of specific language contained in the
2 Agreement. Clarification of the parties' rights and obligations under the Agreement is both necessary
3 and proper at this time so that PLAINTIFF can determine where he can and should maintain his
4 representative claim. As noted above, the Agreement of the parties states that "recovery of underpaid
5 wages (as opposed to representative claims for civil penalties) under the California Labor Code shall be
6 arbitrable, and must be brought, if at all, on an individual basis in arbitration as set forth in this Mutual
7 Arbitration Provision." By this action, PLAINTIFF asks the Court to determine that, to the extent the
8 Agreement designates underpaid wages as unobtainable in a representative action under PAGA, the
9 Representative Action Waiver is unenforceable. In other words, PLAINTIFF asks the Court to declare
10 that underpaid wages, to the extent they are recoverable as PAGA penalties, may be litigated in a
11 representative manner under PAGA.

12 26. The Agreement between the parties purports to require PLAINTIFF to waive all rights
13 to pursue underpaid wages as PAGA penalties on a representative basis.

14 27. California Civil Code § 1667 defines "unlawfulness" as "(1) Contrary to an express
15 provision of law; (2) Contrary to the policy of express law, though not expressly prohibited; or
16 (3) Otherwise contrary to good morals."

17 28. California Labor Code § 558(a) includes in its definition of a "civil penalty" both
18 "[w]ages recovered pursuant to this section" and "an amount sufficient to recover underpaid wages."
19 Thus, civil penalties include claims for underpaid wages, and are cognizable under the PAGA.

20 29. PLAINTIFF now thus seeks from the Court declarations that:

21 a) The Agreement's Representative Action Waiver—which purports to deny
22 affected employees from bringing a representative claim under the California PAGA seeking underpaid
23 wages—is unenforceable; and

24 b) Contrary to the stated terms of the Agreement, POTE may maintain a
25 representative PAGA action seeking underpaid wages as penalties for Labor Code violations.

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Violations of Labor Code Private Attorneys General Act

California Labor Code §§ 2698, et seq.

30. PLAINTIFF realleges and incorporates the foregoing paragraphs as though fully set forth herein.

31. PLAINTIFF, an aggrieved employee, brings a claim under California Labor Code §§ 2698-2699.5 in a representative capacity on behalf of current and former service providers of HANDY subjected to the unlawful wage-and-hour practices alleged herein.

32. The California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2698, *et seq.*, grants California employees the right to bring a civil action for the violation of any provision of the labor code on behalf of themselves and other current or former employees in order to recover civil penalties. PAGA is intended to assist in the achievement of maximum compliance with state labor laws by empowering aggrieved employees to act as private attorneys general in order to recover civil penalties for Labor Code violations that would otherwise be prosecuted by the state. *See Arias v. Super. Ct.* (2009) 46 Cal.4th 969, 980.

33. PAGA permits an aggrieved employee to collect the civil penalty authorized by law and normally collectible by the California Labor and Workforce Development Agency. To address violations for which no penalty has been established, § 2699(f) permits aggrieved employees to recover a default penalty in the amount of \$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved employee pay period for each subsequent violation. *See* Cal. Lab. Code § 2699(f).

34. PLAINTIFF seeks to collect these civil penalties for the Labor Code violations described below in the year prior to the date the original complaint in this case was filed and up to the present:

a) Under California Labor Code § 2699(f)(2), civil penalties of one hundred dollars (\$100) for PLAINTIFF and each aggrieved employee of HANDY in California who was required to sign a mandatory arbitration agreement containing the same illegal term in violation of California Labor Code § 432.5 that PLAINTIFF was required to sign upon becoming employed by HANDY—namely, the term excluding unpaid wages from penalties that may

- 1 be sought in a representative capacity.
- 2 b) Under California Labor Code § 2699(f)(2), a civil penalty of one hundred dollars (\$100) for
3 PLAINTIFF and each aggrieved employee per pay period for the initial violation of Labor
4 Code §§ 226.2, and 226.7, and a civil penalty of two hundred dollars (\$200) for PLAINTIFF
5 and each aggrieved employee per pay period for each subsequent violation, for failing to
6 provide meal and rest breaks to service providers employed in California; under California
7 Labor Code § 558, for violating Labor Code § 512 and IWC Wage Order 5 §§ 11-12, a civil
8 penalty of fifty dollars (\$50) plus the amount sufficient to recover underpaid wages for each
9 employee for every initial failure to provide meal and rest breaks to service providers
10 employed in California, and a civil penalty or one hundred dollars (\$100) plus the amount
11 sufficient to recover unpaid wages for each aggrieved employee for every subsequent
12 violation, as alleged herein.
- 13 c) Under California Labor Code § 226.3, which provides civil penalties for violations of
14 California Labor Code § 226(a), a civil penalty of two hundred fifty dollars (\$250) for
15 PLAINTIFF and each aggrieved employee for the first violation, and one thousand dollars
16 (\$1,000) for PLAINTIFF and each aggrieved employee for each subsequent violation of
17 Labor Code § 226(a), for HANDY's failure to provide timely, accurate, itemized wage
18 statements to service providers employed in California, as alleged herein.
- 19 d) Under California Labor Code § 203, which provides civil penalties for violations of
20 California Labor Code §§ 201 and 202, a penalty of the wages of each aggrieved employee
21 for each day HANDY did not pay the aggrieved employees following their discharge or
22 termination, up to thirty days of pay, as alleged herein.
- 23 e) Under California Labor Code § 558(a), which provides civil penalties for violations of
24 California Labor Code § 510, a penalty of fifty dollars (\$50) for each initial violation for
25 which an employee was underpaid, as well as a penalty of one hundred dollars (\$100) for
26 each subsequent violation for which an employee was underpaid, and an amount sufficient
27 to recover unpaid wages, for HANDY's failure to pay overtime, as alleged herein.
- 28 f) Under California Labor Code § 2699(f), a default penalty in the amount of one hundred

dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee pay period for each subsequent violation, for HANDY's failure to pay POTE and other service providers in California for time spent traveling to their first job, as well as time spent traveling between jobs, as alleged herein. *See, e.g.*, Cal. Lab. Code § 200; Wage Order 5-2001(2)(K) ("‘Hours worked’ means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so . . .").

- g) Under California Labor Code § 225.5, which provides civil penalties for violations of California Labor Code § 221, which prohibits repayment of wages to an employer, a civil penalty in the amount of two hundred dollars (\$200) for each initial willful violation for each services provider, plus two hundred dollars (\$200) for each subsequent violation for each services provider, plus twenty-five percent (25%) of the total amounts retracted, for each instance of HANDY's assessment of fees from wages owed in exchange for earlier payment, as alleged herein.
- h) Under California Labor Code § 2699(f), a default penalty in the amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation, for HANDY's failure to indemnify POTE and other aggrieved employees for cleaning supplies used, as well as for gas and other expenses incurred to drive to, from, and between job sites in violation of California Labor Code § 2802, as alleged herein. These expenditures were necessary and incurred in direct consequence of the discharge of his and other service providers' duties for HANDY.

35. California Labor Code § 2699(g) further provides that any employee who prevails in an action for civil penalties is entitled to an award of reasonable attorneys' fees and costs. PLAINTIFF seeks to recover his attorneys' fees and costs under this fee and cost provision.

36. On September 14, 2018, pursuant to California Labor Code § 2699.3, PLAINTIFF submitted notice to the Labor and Workforce Development Agency (LWDA) of the specific provisions

1 of the Labor Code that have been violated, including the facts and theories to support the violations.
2 PLAINTIFF sent this notice to HANDY by certified mail. The sixty-five-day time limit for the agency
3 to respond has expired, such that PLAINTIFF has exhausted his administrative remedies. In addition,
4 PLAINTIFF has not received any written notice from HANDY that the violations alleged above have
5 been cured.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, PLAINTIFF POTE prays for judgment as follows:

- 8 1. For a declaration that the provisions in the Agreement between POTE and
9 DEFENDANTS purporting to ban maintenance of representative PAGA actions for underpaid wages in
10 any forum – civil or arbitral – was and is void as against public policy and illegal;
11 2. For a declaration that POTE may maintain a representative PAGA action for underpaid
12 wages as civil penalties;
13 3. For civil penalties under PAGA for HANDY's violation of various Labor Code
14 Provisions as to POTE and other aggrieved service providers in California;
15 4. For reasonable costs of suit herein and attorneys' fees incurred pursuant to CCP
16 § 1021.5, Labor Code § 2699(g), or to the maximum extent available by law;
17 5. For an award of attorneys' fees under Code of Civil Procedure § 1021.5 and Labor Code
18 § 2699(g); and
19 6. For such other and further relief as the Court may deem just and proper.
20

21 DATED: November 19, 2018

Respectfully submitted,

22 **GIBBS LAW GROUP LLP**

23 By: 

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PROOF OF SERVICE

I am employed in the county of Alameda, State of California. I am over the age of 18 and not a party to the within action. My business address is: 505 14th Street, Suite 1110, Oakland, California 94612.

On November 19, 2018 I served a copy of the foregoing documents described as follows:

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FIRST AMENDED COMPLAINT

on the following interested party(ies) in this action:

Chad Greeson, Of Counsel
Littler Mendelson
1255 Treat Blvd., Ste. 600
Walnut Creek, , California 94597
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☒ BY MAIL: by placing the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at Oakland, California addressed as set forth above.

☐ BY OVERNIGHT DELIVERY: by depositing the document(s) listed above in a sealed envelope for collection and delivery by FedEx with delivery fees paid or provided for in accordance with ordinary business practices.

☒ BY EMAIL: by electronically transmitting a PDF version of above listed documents to the email addresses set forth above on this date.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 19, 2018 at Oakland, California.


Renée Byndloss